

April 1, 2024

Honorable Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

RE: Overdraft Lending: Very Large Financial Institutions Docket No. CFPB-2024-0002

Dear Director Chopra:

As credit union leaders within California and Nevada, we are writing in response to the notice of proposed rulemaking issued by the Consumer Financial Protection Bureau (CFPB) regarding its efforts to limit overdraft fees for very large financial institutions (an insured depository institution or an insured credit union that has total assets of more than \$10 billion). We have several concerns with this proposed rule and would like to respectfully provide the following comments for your consideration. Specifically, we kindly ask that the CFPB study how the proposed rule would: 1) impact the availability of overdraft services across the credit union industry; 2) affect financial institutions with assets below \$10 billion; 3) affect access to overdraft services among low- and moderate-income households.

Credit unions are proud of our mission of “people helping people” and promoting financial wellbeing for all. Concerns about the proposed rule stem from feedback from credit union members about the benefits of overdraft services. Open communications and relationship banking are a hallmark of credit union services.

Specific Comments Pertaining to the Proposed Rule:

The CFPB contends that consumers will significantly benefit from this proposed rule; however, evidence suggests otherwise, as consumers actively choose to enroll in overdraft programs even after receiving comprehensive, transparent, and meaningful written program disclosures. Additionally, contrary to the CFPB's portrayal, overdraft fees are not deemed unfair or deceptive, nor should they be labeled as “junk fees.”

Credit unions offer overdraft services that are reasonable and disclosed to consumers. In addition, per Regulation E 12 CFR 1005.17, overdraft services are opt-in and disclosures are outlined in writing. Overdraft services are also disclosed up front before enrolling in the service or before the credit union member opts to make changes to the service. Credit unions are required to disclose this information per Truth in Savings Act Regulations, 12 CFR 707.11.

Consumers understand the benefit and value of overdraft.

As indicated above, consumers anticipate these fees, as they are voluntarily participating in overdraft protection with clear, meaningful disclosures and the option to opt out at any time. Before opting for overdraft protection, credit unions encourage our members to carefully review the terms and conditions associated with the service. This includes understanding the overdraft fees charged by the credit union, any limits on overdraft amounts, and how overdraft transactions are processed. In addition, it is common practice for credit unions to reach out to consumers who overdraft frequently.

We urge the CFPB to carefully consider the potential unintended consequences of the proposed changes – particularly for consumers of moderate means.

For many of our members, overdraft protection is not just a convenience but a lifeline, especially for those with low to moderate means or a low credit score. It serves as a crucial emergency safety net, allowing them to cover essential expenses like groceries, gas, utilities, and housing payments. Without overdraft protection, failing to cover these transactions could result in severe consequences such as eviction or force members into seeking more expensive alternatives, such as predatory lenders.

Furthermore, restricting access to overdraft protection could force credit unions into a difficult position. If finalized as proposed, a credit union, especially those under the \$10 billion threshold, might have to either accept higher risks associated with unchecked overdraft behaviors or eliminate these services altogether.

Credit unions may experience “safety and soundness” challenges during exam periods with the National Credit Union Administration if they lower overdraft fees to offer a competitive service. Therefore, the CFPB's proposal to restrict overdraft fees could lead to reduced access to financial services and increased costs for basic necessities, disproportionately impacting financially vulnerable consumers. Such a move contradicts the objectives of promoting access and inclusion in financial services that regulators, including the CFPB, strive to achieve.

The proposal does not consider key administrative costs.

Credit unions are not-for-profit organizations owned by their members, who are also their customers. Any profits generated by our credit union are returned to our members in the form of lower fees, higher interest rates on savings, or better services. The proposal overlooks the actual administrative costs involved in covering overdrafts and monitoring repayment processes. There are significant expenses associated with opening and servicing accounts in a compliant manner. This includes implementing and maintaining the technological infrastructure necessary to manage our overdraft protection program, as well as analyzing usage patterns, evaluating the impact on our members, and carefully assessing and managing our risks to protect both the credit union's financial stability and the interests of credit union members.

Outreach to our members is important.

In the interest of protecting our members, credit unions have implemented positive, proactive measures that expand choices, strengthen transparency, and increase affordability for our members. Across the credit union industry, many credit unions have taken steps to: (1) reduce fees overall, (2) reduce fees on small transactions, (3) eliminate or reduce fees on transactions resulting in small negative balances, (4) eliminate transfer fees, (5) automate the fee waiver process; and/or (6) cap the number of instances certain fees can be charged per day or another specified period.

Furthermore, credit unions are focused on assisting members who frequently incur overdraft fees. When a credit union becomes aware of a member's frequent overdraft usage, the credit union may attempt to contact the member to address their financial situation and offer financial education and/or alternative credit products tailored to their unique needs. This proactive approach exemplifies the pro-consumer nature of the credit union-member relationship, which distinguishes it within the financial services industry.

Conclusion:

As the CFPB develops regulations, consideration must be given to how consumers may be empowered to make choices that best support their personal finances.

We appreciate your consideration of our views on this critical matter. The proposed rule has the potential to undermine the vital role credit unions play in providing affordable and accessible financial solutions to our members. We urge you to consider a fair and balanced solution that addresses the unique challenges faced by credit unions in today's financial landscape.

Sincerely,

The Undersigned Credit Unions of California:

1st Northern California CU

California Coast CU

1st United CU

California CU

Arrowhead CU

Chaffey FCU

Bay FCU

Coast Central CU

Credit Union of Southern California

Diablo Valley FCU

Educational ECU

Escondido FCU

Financial Partners CU

Firefighters First FCU

First Entertainment CU

First Tech FCU

First US Community CU

Foothill FCU

Heritage Community CU

Kinecta FCU

LA Financial CU

LBS Financial CU

Logix FCU

Members 1st CU

Modesto's First FCU

Monterra CU

OE Federal CU

Orange County's CU

Organized Labor CU

Pacific Postal CU

Pacific Service CU

Parishioners FCU

Partners FCU

Patelco CU

Polam FCU

Premier America CU

PremierOne CU

Redwood CU

SAFE CU

San Diego County CU

San Francisco Fire CU

Santa Ana FCU

Santa Barbara County FCU

Santa Clara County FCU

SCE FCU

SchoolsFirst FCU

SESLOC FCU

Sierra Central CU

SMW 104 FCU

Technicolor FCU

Thinkwise CU

Travis CU

Upward CU

Valley First CU

Valley Strong CU

Ventura County CU

Vocality Community Credit Union

Wescom CU

Wheelhouse CU

The Undersigned Credit Unions of Nevada:

Boulder Dam CU

Elko FCU

Financial Horizons CU

Great Basin FCU

Greater Nevada CU

Pahranagat Valley FCU

Reno City EFCU

Silver State Schools CU

Weststar CU